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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.												
10/655,815	09/05/2003	Edward E. Durrant	1021.U03	7156												
7590 Keely Schneiter Keely Schneiter, P.C. 74 West 100 North P.O. Box 675 Logan, UT 84321		01/17/2008	<table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">RIGGLEMAN, JASON PAUL</td></tr><tr><td>ART UNIT</td><td>PAPER NUMBER</td></tr><tr><td>1792</td><td></td></tr><tr><td>MAIL DATE</td><td>DELIVERY MODE</td></tr><tr><td>01/17/2008</td><td>PAPER</td></tr></table>		EXAMINER		RIGGLEMAN, JASON PAUL		ART UNIT	PAPER NUMBER	1792		MAIL DATE	DELIVERY MODE	01/17/2008	PAPER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/655,815

Applicant(s)

DURRANT ET AL.

Examiner

Jason P. Riggleman

Art Unit

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7, 16-19, 25-28 and 33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 16-19, 25-28 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Foreign reference.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/13/2007 has been entered.

### ***Status of Claims***

Applicant's amendment, filed 12/13/2007, has been received. Current pending claims are 1-7, 16-19, 25-28, and 33. Claims 16, 25, and 33 are amended. Claims 8-15, 20-24, 29-32, and 34-36 are cancelled.

### ***Response to Amendments***

Applicant's arguments with respect to claims 1-7, 16-19, 25-28, and 33 have been considered but are moot in view of the new ground(s) of rejection. The applicant's amendment's to the claims have necessitated the new grounds for rejections. The previous 112, second paragraph, rejection of claims 33-36 and 38 are withdrawn in view of the amendment/cancellation of the claims. The objection to the drawings are withdrawn in view of the amendments to the specification.

### ***Remarks***

Claims 7, 18, and 28 are not given patentable weight. However, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure

is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of Sales, as modified by Brain et al., is capable of delivering a carbonated liquid, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by Sales, as modified by Brain et al., and no such structural distinction is apparent.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 6, 17, 25, and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regards to claim 6, the phrase "a cleaning solution vacuum system, associated with a cleaning applicator" is not proper language for an apparatus claim. In regards to claim 25, a "cleaning rate of at least 50 square feet of textile area per gallon of cleaning solution" is not understood. For instance, this depends on subjective factors such as speed of cleaning by the operator and the subjective determination of *cleanliness*. For purposes of examination, this is not given patentable weight. In regards to claims 2, 17, and 27, the applicant's

invention is clearly a cleaning system -- not a vehicle (as stated in the preamble). It is not understood from the claims how the vehicle engine is relevant; therefore, this (both the vehicle and the vehicle engine) is assumed to be intended use and is not given patentable weight. "[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 16-19, 25-28 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sales in view of Brain et al. (UK Patent Application GB2027335A).

Sales discloses a cleaning vehicle (Fig. 1, Item 15), engine (Fig. 2, Item 6), cleaning fluid storage (67), delivery system (116, 11), and effluent storage system (125). Sales also discloses a mixing chamber where the chemical line (66) mixes with the water line (47). Sales further shows a heating system (see Fig. 2, Item 46), a cleaning applicator (11) and vacuum system (120). Sales does not specifically disclose an air pressure pump in the compressor system. Sales also discloses the flow rate is less than 1.5 gallons because it can be turned off. Although Sales does not describe the exact cleaning rate, the claimed structures are the same and therefore would be expected to perform the same. However, Brain et al. discloses an air pressure pump used to move

cleaning solution (Lines 96-105). At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Sales with Brain et al. to create an air driven fluid system to achieve the expected result.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ebberts (US Patent No. 6554207) teaches an air compressor liquid delivery system which delivers a carbonated cleaning solution.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Riggleman whose telephone number is 571-272-5935. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner  
Art Unit 1792

JPR



MICHAEL BARR  
SUPERVISORY PATENT EXAMINER